

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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United States Court of Appeals for the
District of Columbia

APRIL TERM, 1935

No. 6507 **742**

WALTER A. WELLS, APPELLANT,

vs.

ALROPA CORPORATION, A BODY CORPORATE.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

FILED JULY 1, 1935.

PRINTED SEPTEMBER 10, 1935.

United States Court of Appeals for the District of Columbia

APRIL TERM, 1935

No. 6507

WALTER A. WELLS, APPELLANT,

vs.

ALROPA CORPORATION, A BODY CORPORATE,
APPELLEE.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

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United States Court of Appeals for the District of Columbia

No. 6507.

WALTER A. WELLS, Appellant,
vs.

ALROPA CORPORATION, a Body Corporate.

a Supreme Court of the District of Columbia.

At Law.

No. 83793.

ALROPA CORPORATION, a Body Corporate, Plaintiff,
vs.

WALTER A. WELLS, Defendant.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

1

Declaration.

Filed March 12, 1934.

In the Supreme Court of the District of Columbia.

Law. No. 83793.

ALROPA CORPORATION, a Body Corporate, Plaintiff,
vs.

WALTER A. WELLS, Defendant.

Count One: The plaintiff, Alropa Corporation, a body corporate, existing under and by virtue of the laws of the

State of Florida, sues the defendant, Walter A. Wells, for that heretofore, to wit, on the 27th day of November, 1925, the said defendant did execute and deliver his one certain promissory note to W. C. Jackson, the same being of the following tenor and in the following words and figures, to wit:

Face of Note.

No. 1. \$1,111.11.

Miami, Florida, Nov. 27, 1925.

On or before One year after date, for value received, I promise to pay to the order of W. C. Jackson One Thousand One Hundred and Eleven and 11/100 Dollars at Miami Bank and Trust Company, of Miami, Florida, with interest thereon at the rate of 8 per cent, per annum from date until fully paid. Interest payable semi-annually. The maker and endorser of this note further agree to waive demand, notice of non-payment, and in case suit shall be brought for the collection hereof, or the same has to be collected upon demand of an attorney, to pay reasonable attorney's fees for making such collection. Deferred interest payments to bear interest from maturity at 8 per cent, per annum, payable semi-annually.

(S.) WALTER A. WELLS,

*The Rochambeau,
Washington, D. C.*

2

Back of Note.

Without recourse W. C. Jackson.

That thereafter, after maturity, for value received, the said W. C. Jackson, the payee named in said note, did endorse, transfer and deliver the aforesaid promissory note to the plaintiff, who is now the holder thereof. That the said note was not paid at the maturity thereof, to wit, November 27th, 1926, although demand therefor was made and that said defendant still fails and refuses to pay the sum due or any part thereof. That because of the non-payment of said note, it has become necessary for the plaintiff to place the same in the hands of attorneys for collection.

Wherefore, the plaintiff brings this action and claims of the defendant the sum of \$1,111.11, with interest thereon at eight per cent (8%) per annum from November 27th, 1925,

as provided in said note, and the sum of \$166.66, being fifteen per cent (15%) of the principal of said note, which plaintiff deems a reasonable attorneys' fee, besides the costs of this action.

Count Two: The plaintiff, Alropa Corporation, a body corporate, existing under and by virtue of the laws of the State of Florida, sues the defendant Walter A. Wells for that heretofore, to wit, on the 27th day of November, 1925, the said defendant did execute and deliver his one certain promissory note to W. C. Jackson, the same being of the following tenor and in the following words and figures, to wit:

Face of Note.

No. 2. \$1,111.11. Miami, Florida, Nov. 27, 1925.

On or before Two years after date, for value received, I promise to pay to the order of W. C. Jackson, One Thousand One Hundred and Eleven and 11/100 Dollars at Miami Bank and Trust Company, of Miami, Florida, with
3 interest thereon at the rate of 8 per cent, per annum from date until fully paid. Interest payable semi-annually. The maker and endorser of this note further agree to waive demand, notice of non-payment, and in case suit shall be brought for the collection hereof, or the same has to be collected upon demand of an attorney, to pay reasonable attorney's fees for making such collection. Deferred interest payments to bear interest from maturity at 8 per cent, per annum, payable semi-annually.

(S.) WALTER A. WELLS,
The Rochambeau,
Washington, D. C.

Back of Note.

Without recourse W. C. Jackson.

That thereafter, after maturity, for value received, the said W. C. Jackson, the payee named in said note, did endorse, transfer and deliver the aforesaid promissory note to the plaintiff, who is now the holder thereof. That the said note was not paid at the maturity thereof, to wit, November 27th, 1927, although demand therefor was made and that said defendant still fails and refuses to pay the sum due or any part thereof. That because of the non-

payment of said note, it has become necessary for the plaintiff to place the same in the hands of attorneys for collection.

Wherefore, the plaintiff brings this action and claims of the defendant the sum of \$1,111.11, with interest thereon at eight per cent (8%) per annum from November 27th, 1925, as provided in said note, and the sum of \$166.66, being fifteen percent (15%) of the principal of said note, which plaintiff deems a reasonable attorneys' fee, besides the costs of this action.

Count Three: The plaintiff, Alropa Corporation, a body corporate, existing under and by virtue of the laws of the State of Florida, sues the defendant, Walter A. Wells, 4 for that heretofore, to wit, on the 27th day of November, 1925, the said defendant did execute and deliver his one certain promissory note to W. C. Jackson, the same being of the following tenor and in the following words and figures, to wit:

Face of Note.

No. 3. \$1,111.11. Miami, Florida, Nov. 27, 1925.

On or before Three years after date, for value received, I promise to pay to the order of W. C. Jackson One Thousand One Hundred and Eleven and 11/100 Dollars at Miami Bank and Trust Company, of Miami, Florida, with interest thereon at the rate of 8 per cent, per annum from date until fully paid. Interest payable semi-annually. The maker and endorser of this note further agree to waive demand, notice of non-payment, and in case suit shall be brought for the collection hereof, or the same has to be collected upon demand of an attorney, to pay reasonable attorney's fees for making such collection. Deferred interest payments to bear interest at 8 per cent per annum, payable semi-annually.

(S.) WALTER A. WELLS,
The Rochambeau.
Washington, D. C.

Back of Note.

Without recourse W. C. Jackson.

That thereafter, after maturity, for value received, the said W. C. Jackson, the payee named in said note, did en-

dorse, transfer and deliver the aforesaid promissory note to the plaintiff, who is now the holder thereof. That the said note was not paid at the maturity thereof, to wit, November 27th, 1928, although demand therefor was made and that said defendant still fails and refuses to pay the sum due, or any part thereof. That because of the non-payment of said note, it has become necessary for the plaintiff to place the same in the hands of attorneys for collection.

Wherefore, the plaintiff brings this action and claims of the defendant the sum of \$1,111.11, with interest thereon at eight per cent (8%) per annum from November 27th, 1925, as provided in said note, and the sum of \$166.66, being fifteen per cent (15%) of the principal of said note, which plaintiff deems a reasonable attorneys' fee, besides the costs of this action.

ALVIN L. NEWMYER,
JOSEPH A. KAUFMANN,
Attorneys for Plaintiff.

Affidavit of Merit.

DISTRICT OF COLUMBIA, ss:

Joseph A. Kaufmann, being first duly sworn upon his oath according to law, deposes and says that he is one of the attorneys for the plaintiff, Alropa Corporation, a body corporate, in the above entitled cause, wherein Walter A. Wells is named as defendant; that he has authority to and does hereby make this affidavit for and on behalf of said plaintiff; that said plaintiff has a good cause of action against the said defendant and that said attorney expects to prove the following facts at the trial of said cause:

That heretofore, to wit, on the 27th day of November, 1925, the said defendant did execute and deliver his three certain promissory notes to W. C. Jackson, the same being of the following tenor and in the following words and figures, to wit:

6

Face of Note.

No. 1. \$1,111.11. Miami, Florida, Nov. 27, 1925.

On or before One year after date, for value received, I promise to pay to the order of W. C. Jackson One Thousand One Hundred and Eleven and 11/100 Dollars at Miami

Bank and Trust Company, of Miami, Florida, with interest thereon at the — 8 per cent per annum from date until fully paid. Interest payable semi-annually. The maker and endorser of this note further agree to waive demand, notice of non-payment, and in case suit shall be brought for the collection hereof, or the same has to be collected upon demand of an attorney, to pay reasonable attorney's fees for making such collection. Deferred interest payments to bear interest from maturity at 8 per cent, per annum, payable semi-annually.

(S.) WALTER A. WELLS,
The Rochambeau,
Washington, D. C.

Back of Note.

Without recourse W. C. Jackson.

Face of Note.

No. 2. \$1,111.11. Miami, Florida, Nov. 27, 1925.

On or before Two years after date, for value received, I promise to pay to the order of W. C. Jackson, One Thousand One Hundred and Eleven and 11/100 Dollars at Miami Bank and Trust Company, with interest thereon at the rate of 8 per cent, per annum from date until fully paid. Interest payable semi-annually. The maker and endorser of this note further agree to waive demand, notice of non-payment, and in case suit shall be brought for the collection hereof, or the same has to be collected upon demand of an attorney, to pay reasonable attorney's fees for making such collection. Deferred interest payments to bear interest from maturity at 8 per cent, per annum, payable semi-annually.

(S.) WALTER A. WELLS,
The Rochambeau,
Washington, D. C.

Back of Note.

Without recourse W. C. Jackson.

7

Face of Note.

No. 3. \$1,111.11. Miami, Florida, Nov. 27, 1925.

On or before Three years after date, for value received, I promise to pay to the order of W. C. Jackson One Thou-

sand One Hundred and Eleven and 11/100 Dollars at Miami Bank and Trust Company, of Miami Florida, with interest thereon at the rate of 8 per cent, per annum from date until fully paid. Interest payable semi-annually. The maker and endorser of this note further agree to waive demand, notice of non-payment, and in case suit shall be brought for the collection hereof, or the same has to be collected upon demand of an attorney, to pay reasonable attorney's fees for making such collection. Deferred interest payments to bear interest at 8 per cent per annum, payable semi-annually.

(S.) WALTER A. WELLS,
The Rochambeau,
Washington, D. C.

Back of Note.

Without recourse W. C. Jackson.

That thereafter, after maturity, for value received, the said W. C. Jackson, the payee named in said notes, did endorse, transfer and deliver the aforesaid promissory notes to the plaintiff, who is now the holder thereof. That the said notes were not paid at maturity thereof and that the full amount of the same remains due and unpaid, although demand therefor has been made and that said defendant still fails and refuses to pay the sum due, or any part thereof. That because of the non-payment of said notes it has become necessary for the plaintiff to place the same in the hands of attorneys for collection.

Wherefore there is now due and owing from the defendant to the plaintiff and the plaintiff claims of the defendant the sum of \$3,333.33, with interest at the rate of eight per cent (8%) per annum on \$1,111.11 from November 27th, 1925, and interest on \$1,111.11 at the rate of eight per cent (8%) per annum from November 27th, 1926 and interest on \$1,111.11 at the rate of eight per cent (8%) per annum from November 27th, 1927 and the sum of \$499.99, being fifteen per cent (15%) of said notes as attorneys' fees, exclusive of all set offs and just grounds of defense, besides the costs of this action.

JOSEPH A. KAUFMANN.

Subscribed and sworn to, before me, this 12" day of March, 1934.

FRANK E. CUNNINGHAM,
Clerk,
 By ANDREW A. HORNER,
Ass't Clerk.

Amendments to Declaration.

Filed May 29, 1934.

Leave of Court first had and obtained, plaintiff hereby amends his declaration in the above entitled cause as follows:

Page —, count 1, line—after "note", insert "under seal."
 Page 1, count 1, line 24 after "Wells" add "(Seal)."
 Page 2, count 2, line 5 after "note", insert "under seal."
 Page 3, count 2, line 6 after "Wells", add "(Seal)."
 Page 3, count 3, line 5, after "note," insert "under seal."
 Page 4, count 3, line 17 after "Wells", add "(Seal)."

ALVIN L. NEWMYER,
 JOSEPH A. KAUFMANN,
Attorneys for Plaintiff.

9 *Amendments to Affidavit of Merit.*

DISTRICT OF COLUMBIA, ss:

Joseph A. Kaufmann, being first duly sworn upon his oath according to law, deposes and says that he is one of the attorneys for the plaintiff, Alropa Corporation, a body corporate, in the above entitled cause, wherein Walter A. Wells is named as defendant; that he has authority to and does hereby make the following amendments to the Affidavit of Merit filed in the above entitled cause, leave of Court first had and obtained:

Page 1, paragraph 2, line 3, after "notes" insert "under seal".

Page 2 and three on notes 1, 2 and 3 where the signature or name "Walter A. Wells" appears, add after the word "Wells" in all three instances, the word "(Seal)".

JOSEPH A. KAUFMANN.

Subscribed and sworn to, before me, this 28th day of May, 1934.

[NOTARIAL SEAL.] MARGARET MACPHERSON,
*Notary Public in and for the
 District of Columbia.*

10 Supreme Court of the District of Columbia.

Thursday, June 14, 1934.

Session resumed pursuant to adjournment. Hon. Jennings Bailey, Justice, presiding.

Upon consideration of the motion filed herein, for oyer, it is ordered that said motion be, and the same is hereby granted in so far as to permit the defendant to examine or inspect the note in this suit.

11 *Motion to Strike.*

Filed August 6, 1934.

Now comes the defendant, Walter A. Wells, by his attorney, F. Regis Noel, and appearing specially for the purpose of this motion and none other, respectfully moves the Court to strike from the record the declaration filed in the above entitled cause.

F. R. NOEL,
*Attorney for Walter A. Wells,
appearing specially for the
purpose of this motion.*

Supreme Court of the District of Columbia.

Monday, October 22, 1934.

Session resumed pursuant to adjournment, Hon. F. Dickinson Letts, Justice, presiding.

Upon consideration of the motion filed herein, to strike the declaration, it is ordered that said motion be, and the same is hereby denied, with leave to plead over within ten days hereof. To the foregoing order the defendant notes an exception which is duly allowed.

Plea to the Declaration.

Filed January 9, 1935.

Now comes the defendant, Walter A. Wells, by his attorney, F. Regis Noel, and for plea to the declaration filed

in the above entitled cause, says: the consideration
12 paid for the notes sued upon herein wholly failed;
that the enforcement of payment of said notes is
barred by the Statute of Limitations; that there has been
no demand for payment or presentment of said notes; that
the plaintiff corporation paid nothing of value for said
notes; that said plaintiff is not a holder of said notes for
value, or any consideration, in due course of business, and
that said plaintiff acquired said notes after maturity and
dishonor.

F. R. NOEL,
Attorney for Defendant.

Affidavit of Defense.

Filed January 9, 1935.

DISTRICT OF COLUMBIA, ss:

Walter A. Wells being first duly sworn, on oath deposes
and says that he is the defendant named in the above en-
titled cause; that he is advised and believes, and upon such
information and belief avers, and expects to prove at the
trial hereof, that the consideration paid for the notes sued
upon herein wholly failed; that the enforcement of payment
of said notes is barred by the Statute of Limitations; that
there has been no demand for payment or presentment of
said notes; that the plaintiff corporation paid nothing of
value for said notes; that said plaintiff is not a holder of
said notes for value, or any consideration, in due course of
business, and that said plaintiff acquired said notes after
maturity and dishonor.

WALTER A. WELLS.

13 Subscribed and sworn to before me this 5th day of
January, 1935.

[NOTARIAL SEAL.]

VIRGINIA COMFORT,
Notary Public, D. C.

Supreme Court of the District of Columbia.

Friday, April 5, 1935.

Session resumed pursuant to adjournment, Hon. James
M. Proctor, Justice, presiding.

Comes now the plaintiff by its attorneys of record and prays judgment against the defendant for its claim herein, whereupon, it appearing to the Court that a motion for judgment under the 73rd rule was denied upon the 18th day of March, 1935, with leave to the defendant to plead over within ten days thereof, and that no pleading has been filed herein since that date, and it further appearing that the defendant herein, now in open Court, elects to stand on his pleas as filed, judgment is accordingly ordered.

Wherefore, it is considered that plaintiff recover of the defendant herein the sum of One Thousand One Hundred Eleven Dollars and Eleven Cents (\$1111.11) with interest thereon at the rate of eight per cent (8%) per annum from November 27, 1925, until paid, plus an attorney's fee of One Hundred Sixty-six Dollars and Sixty-six Cents (\$166.66), together with costs of suit to be taxed by the clerk and have execution thereof.

From the foregoing judgment the defendant by his attorney of record, in open Court, notes an appeal to the Court of Appeals of this District; whereupon, an
14 undertaking to act as a cost bond is hereby fixed in the sum of One Hundred Dollars (\$100.00) with leave to deposit Fifty Dollars (\$50.00) cash with the clerk in lieu thereof.

Memorandum.

April 22, 1935. \$50 deposited by Noel for Defendant on appeal.

Assignment of Errors.

Filed April 29, 1935.

Comes now the defendant in the above entitled cause and files the following Assignment of Errors upon which he will rely in prosecuting his appeal in the above entitled cause from the judgment entered by the Supreme Court of the District of Columbia on the 5th day of April, 1935.

The Court erred:

1. In denying defendant's motion to strike the Declaration, as amended, on October 22, 1934, the ground for said motion being that the notes in suit were and are barred by the Statute of Limitations in force in the District of Columbia, in that said notes did not recite that they were signed

and sealed by the maker—defendant herein—and there being no indication on the face of said notes that said defendant adopted as his seal the printing thereon.

2. In holding that the defendant's pleas and affidavit of merit were insufficient under the 73rd Rule.

3. In entering judgment for the plaintiff on April 5, 1935.

4. And for other errors as will appear in the Record.

F. R. NOEL,

Attorney for Defendant.

15 Service of copy of the above Assignment of Errors acknowledged this 29 day of April, 1935.

A. L. NEWMYER,

Attorney for Plaintiff.

Designation of Record.

Filed April 29, 1935.

Now comes Walter A. Wells, the appellant in the above entitled cause, and designates the parts of the record which he desires to have included in the transcript, said parts being considered sufficient for the determination of the questions raised on appeal, namely:

1. Declaration and amendments thereto; affidavit of merit and amendments thereto.

2. Order granting oyer (M. 89, p. 197).

3. Motion to strike declaration filed August 6, 1934; denial of said motion and exception of defendant, October 22, 1934 (M. 89, p. 423).

4. Plea and Affidavit of Defense filed January 9, 1935.

5. Minute entries, April 5, 1935 (M. 90, p. 317). Defendant elects to stand on pleas; judgment for plaintiff, interest and attorneys fees.

6. Notation of appeal in open Court, setting appeal bond at one hundred dollars or fifty dollars in cash in lieu thereof.

7. Memorandum—fifty dollars in cash paid—April 22" 1935.

8. Assignment of errors.

16 9. This designation.

F. R. NOEL,

Attorney for Defendant.

Service of the foregoing acknowledged this 29 day of April, 1935.

A. L. NEWMYER,
Attorney for Plaintiff.

17 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Frank E. Cunningham, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 16, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 83793 at Law, wherein Alropa Corporation, a body corporate, is Plaintiff and Walter A. Wells is Defendant, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 27th day of June, 1935.

[Seal, Supreme Court of the District of Columbia.]

FRANK E. CUNNINGHAM,
Clerk.

Endorsed on cover: District of Columbia Supreme Court. No. 6507. Walter A. Wells, Appellant, vs. Alropa Corporation, a Body Corporate. United States Court of Appeals for the District of Columbia. Filed Jul. 1, 1935. Henry W. Hodges, Clerk.

(6694-C)

FILED OCT 8 1 1935

Handwritten signature

IN THE
**United States Court of Appeals
for the District of Columbia**

OCTOBER TERM, 1935

No. 6507

WALTER A. WELLS, *Appellant*,
v.
ALROPA CORPORATION, A Body Corporate, *Appellee*.

BRIEF FOR APPELLEE

ALVIN L. NEWMYER,
JOSEPH A. KAUFMANN,
Attorneys for Appellee.

IN THE
**United States Court of Appeals
for the District of Columbia**

OCTOBER TERM, 1935

No. 6507

WALTER A. WELLS, *Appellant*,
v.
ALROPA CORPORATION, A Body Corporate, *Appellee*.

BRIEF FOR APPELLEE

STATEMENT OF CASE

Plaintiff, appellee here, obtained judgment in the Supreme Court of the District of Columbia on a promissory note (R. p. 2, 9) as follows:

Face of Note

	Miami, Florida,
"No. 1 \$1,111.11	November 27th, 1925

On or before one year after date, for value received I promise to pay to the order of W. C. Jackson One Thousand One Hundred and Eleven and 11/100 Dollars at MIAMI BANK AND TRUST COMPANY, of Miami, Florida with interest thereon at the rate of 8 per cent, per annum from date until fully paid. Interest payable semi-annually. The maker and endorser of this note further agree to waive demand, notice of

non-payment, and in case suit shall be brought for the collection hereof, or the same has to be collected upon demand of an attorney, to pay reasonable attorney's fees for making such collection. Deferred interest payments to bear interest from maturity at 8 per cent per annum, payable semi-annually.

(s) WALTER A. WELLS (Seal)
THE ROCHAMBEAU (Seal)
WASH., D. C.

Due _____ 1926 _____

Back of Note

Without recourse, (s) W. C. Jackson''

The notes are printed forms, with the blanks filled in on typewriter. They were signed by the maker on a printed line, which had the word "(Seal)" printed alongside the line on the right side.

A motion to strike the declaration on the ground that it was barred by the Statute of Limitations of the District of Columbia was filed (R. p. 9). The note was said to be so barred because it was not under seal; it was contended that the note was not under seal because the said note did not recite that it was signed and sealed by the maker and there was no indication on the face of the note that the maker had adopted the pre-existing printed "(Seal)," which was directly on a line with his signature. This motion to strike was denied and the defendant excepted thereto.

Thereafter the appellant filed a plea and affidavit of defense and a motion for judgment under the 73rd Rule was granted. The appellant obtained leave to file a new plea and affidavit of defense. The amended affidavit (R. p. 10) set forth on information and belief that the consideration paid for the note sued on wholly failed; that the enforcement of payment of said note is barred by the Statute of Limitations; that there was no demand for payment or present-

ment of said note; that the plaintiff paid nothing of value for said note; that the plaintiff did not become the owner of said note for value or any consideration, or in the due course of business and that the plaintiff acquired the said note after maturity and dishonor. A motion for judgment under the 73rd Rule by reason of the insufficiency of the amended affidavit of defense was granted and an exception taken (R. p. 11).

ARGUMENT

The note upon which judgment was entered was not barred by the Statute of Limitations. Counsel for appellee concede that unless the note sued on was a speciality or sealed instrument that the Statute of Limitations would have truly been a bar to this action as pleaded. We say "as pleaded" because unquestionably under the law of Florida, where these notes were made and delivered, they are sealed instruments. They are also sealed instruments under the laws of the District of Columbia.

The controlling decisions uphold the trial Court, that notes having printed seals directly at the end of the line where the signature of the maker appears are truly sealed instruments. This doctrine was clearly illustrated and established in this District in *Green v. Lake*, 2 Mackey, 162, which case has never been reversed in this jurisdiction. There the note in question was signed and the printed seal appeared at the end of the line exactly as it does here. The Court said:

"The question was suggested in the outset, whether this was to be treated as a sealed instrument or a simple contract. The action is brought in debt, which would apply to an instrument bearing either character. It is in evidence that by the law of Mississippi, where this contract was

made, this is a sealed instrument, and we have no hesitation in saying that by the law of the District of Columbia it must also be so regarded. Written scrolls have been from time immemorial regarded as seals here. For twenty years we have been in the habit of using written forms of conveyances for real estate with printed seals only and to hold that these are not seals would be to upset many of the deeds granted during that time."

This reasoning is self evident; the custom of using printed seals and the adoption thereof has been followed to this date. Where a person signs his name right next to the printed "(Seal)" he certainly adopts the same. It is a reproach to the Court's intelligence to argue that a layman should be bound on a note because the body of the instrument contained the additional words "Witness my hand and seal" or "Signed and sealed", and not in the absence of such words, for these are not magic words or words of art and it is evident that one signing his name in such close juxtaposition to the printed seal must have adopted the same.

The Maryland Courts, from whom we obtained our precedents of law, felt likewise and the case of *Thrasher v. Everhart*, 3 Gill and Johnson 234 has often been cited with approval in many jurisdictions in determining that they too would hold similar instruments to be under seal. That Court said:

"It is not necessary as has been argued that the scroll must be adopted by the obligor by a declaration in the body of the bond or single bill to make it his seal. It is sufficient if the scroll be affixed to the bond or bill at the time of its execution and delivery. For if he executed and delivered with the seal attached * * * it is as much his seal as if he had declared it to be so in the body of the instrument."

And in *Keedy v. Moats*, 72 Md. 325, affirming the case just cited, the Court said:

“For though the scroll may have been made or fixed to the notes by plaintiff, if the maker of the note subscribed his name opposite the scroll thus made, he thereby adopted the scroll as his seal, as completely as if he made it himself.”

Decisions controlling in about twenty States reveal at least fifteen of them following the Maryland and District decisions. Decisions from State Courts, and the controlling law therein and supporting appellee's contention, are as follows:

- Arkansas—*Cummings vs. Woodruff*, 5 Ark. 116
- Florida—*Grand Lodge vs. State Bank*, 84 So. 528 (1920); *Langley vs. Ownes*, 52 Fla. 202
- Illinois—*Jackson vs. Security Mutual*, 135 Ill. Ap. 86
- Minnesota—*Brown vs. Fordhol*, 32 Minn. 135 (1184)
- Mississippi—*Hudson vs. Poindexter*, 42 Miss. 304 (1868)
- New York—*O'Keefe vs. French*, 239 App. Div. 498, 268 N. Y. Supp. 102 (1933) appeal denied 264 N. Y. 65
- Ohio—*Osborn vs. Kistler*, 33 Ohio St. 99 (1878)
- Oregon—*Osborne vs. Hubbard*, 20 Ore. 318
- Pennsylvania—*Lorah vs. Nissley*, 156 Pa. 329, 27 Atl. 242 (1893)
- South Carolina—*Giles, Davis & Hill vs. Mauldin*, 7 Rich. L. Rup. 11 (1853)
- Tennessee—*Scruggs vs. Brockin*, 12 Tenn. 528
- Texas—*Mucklevy vs. Bethany*, 23 Tex. 163 (1859)
- Wisconsin—*Williams vs. Starr*, 5 Wis. 534 (1856)

Section 96 of American Law Institute's Re-Statement of Contracts is properly quoted in appellant's brief; at the bottom of page four of the same it is said however that “Such circumstances may, however, be shown to aid the determination of the questions

whether a promisor affixed or adopted a seal (see sec. 98).” We cite Section 98 with approval:

“WHAT AMOUNTS TO ADOPTION OF A SEAL. (1) A promisor who delivers a written promise to which a seal has been previously affixed or impressed, with apparent reference to his signature, thereby adopts the seal * * * Illustration of sub-section 1:

1. A signs and delivers a promise to B., his signature being immediately in front of the word “seal” which has been previously printed or written there by another person. The contract is under seal.”

and Section 100 provides:

“RECITAL OF SEALING OR DELIVERY. A recital of the sealing or of the delivery of a written promise is not essential to its validity as a sealed instrument. Comment: a. A recital may be of importance to show that a dash or scroll after a signature is a seal (see sec. 96); but the recital is not an independent requirement, so that if a wafer or other object attached to a written promise is evidently a seal, a sealed contract is formed though there is no recital.”

Besides, the word “sign” used in section 96 in defining a seal includes “(Seal)”. Moreover the comment thereto states that extrinsic evidence may be introduced to show whether the signer adopted or affixed a seal. It does not say that you may go outside the instrument to decide if the thing is a seal.

In closing the argument showing the note sued on to be a seal instrument, counsel feels that the decisions of State Courts who considered instruments where the party signed on a line right next to a printed seal, contain argument and words more apt than those of counsel. He therefore quotes from *Jackson v. Security Mutual Life Insurance Co.*, 135 Ill. App. 86:

“* * * when appellant placed her signature opposite the printed word “Seal” at the place where the seal usually appears on such instruments, she indicated an intention to make the release in question a sealed instrument. When she saw the word “seal” there she knew or should have known it was intended to represent what it purported to be, and to so hold is in conformity not only with the authorities referred to but is to give effect to the intention of appellant as expressed by her act in placing her signature there.”

And in *Lorah v. Nissley*, 156 Pa. 329:

“If therefore the word “Seal” on the note in suit had been written by Nissley after his name, there could have been no doubt about its efficacy to make a sealed instrument. Does it alter the case any that it was not written by him, but printed beforehand? We cannot see any good reason why it should. Ratification is equivalent to antecedent authority, and the writing of his name to the left of the printed word, so as to bring the latter into the usual and proper place for a seal, is ample evidence that he adopted the act of the printer in putting it there for a seal. The note itself was a printed form with blank spaces for the particulars to be filled in and the use of it raises a conclusive presumption that all parts of it were adopted by the signer, except such as were clearly struck out or intending to be cancelled before signing. The pressure of business life and the subdivision of labor in our day, have brought into use many things ready-made by wholesale which our ancestors made simply for each occasion, and among others the convenience of printed blanks for the common forms of written instruments.”

Appellant has seen fit for some unexplained reason to cite as authority in this court the case of *Alropa Corporation v. Buxton and Guerin*, Law No. 84-961 in

the lower court but has neglected to state that he has only quoted two of the eight pleas that were filed in that case and has further omitted to state that the trial court sustained a demurrer to the two pleas quoted and that the trial court's ruling in that respect was not appealed from, that decision having been made after the decision of the trial court in the case now pending on appeal. Said pleas in the Buxton case were filed in that case merely to preserve the point in view of the announcement of the defendant in this case that he intended to appeal the case now before this court.

Counsel wishes to distinguish the cases of *Brown v. Commercial Fire Insurance Co.*, 21 App. D. C. 325, and *Jacksonville, etc., R., etc. Co. v. Hooper*, 160 U. S. 514, 16 S. Ct. 379, 40 U. S. (L. Ed.) 515 cited by appellant. The Brown case has never been quoted to uphold the appellant's contention; in that case an insurance policy had a seal affixed at the top of the first page of the instrument and the Court there held that it was a question of fact in such a case whether the company had adopted the same; this and the second case are not in point as they bear on the adoption of a seal by a corporation; these and most of the few cases quoted by the appellant are cases of corporate seals, and the Courts have universally distinguished the cases of corporate from those of personal seals. The strongest case cited by appellant is *In re Pirie*, 196 N. Y. 209, 91 N. E. 587, and even that is not in point as in that case the word seal was affixed by a party other than the maker of the instrument after the maker had signed. The true rule in New York is found in *O'Keefe v. French*, 239 App. Div. 498, 268 N. Y. Supp. 102 (1833), appeal denied 264 N. Y. 65 where it was held that a note similar to the one in this case and also executed in Florida was a

sealed note by the law of the latter State and that therefore the New York Statute for sealed instruments applied. Approval of the decision is seen in the refusal of the Court of Appeals to allow an appeal. Similarly the case of *Empire Trust Company v. Heinze*, quoted by appellant does not uphold the reasoning advanced, the note there containing a recital "signed and sealed" in the body of the note and bearing the signature of the maker but there being no mark or seal besides the signature to indicate the existence of a seal.

Appellant's Affidavit of Defense Was Insufficient

"DISTRICT OF COLUMBIA ss:

Walter A. Wells being first duly sworn, on oath, deposes and says that he is the defendant named in the above entitled cause; that he is advised and believes, and upon such information and belief avers, and expects to prove at the trial hereof, that the consideration paid for the notes sued upon herein wholly failed; that the enforcement of payment of said notes is barred by the Statute of Limitations; that there has been no demand for payment on presentment of said notes; that the plaintiff corporation paid nothing of value for said notes; that said plaintiff is not a holder of said notes for value, or any consideration, in due course of business, and that said plaintiff acquired said notes after maturity and dishonor.

WALTER A. WELLS

Subscribed and Sworn to before me this 5th day of January, 1935.

(NOTARIAL SEAL)

VIRGINIA COMFORT,
Notary Public, D. C."

This affidavit (R. p. 10) was an amended affidavit of defense, but the same merely added two short phrases to the first affidavit of defense filed in the case. The first affidavit read "that he is advised and believes and upon such information and belief avers" and the continuation "and expects to prove at the trial hereof" was added in the amended affidavit of defense. The first affidavit stated "that said plaintiff is not a holder of said notes for value" and the amended affidavit added "or any consideration". Judgment for appellant by default under the 73rd Rule was granted for want of a sufficient affidavit of defense after the amended affidavit had been filed; it is to the latter judgment that appellant took exception.

While statements made in affidavits of defense are taken as admitted on a motion for judgment on the insufficiency thereof, it is nevertheless true that it is not enough for a defendant to say that he has a good defense without exhibiting the grounds therefor, nor is it proper or sufficient to allege fraud, usury or failure of consideration unless the facts of these defenses are distinctly stated.

Cropley vs. Vogeler, 2 App. D. C. 28

Durant vs. Murdock, 3 App. D. C. 114

King vs. Curtin, 31 App. D. C. 23

Central Tire & Accessory Co. vs. Koperlik, 61 App. D. C. 142

Having proven heretofore that the enforcement of the notes is not barred by the Statute of Limitations, it will be seen from the examination of appellant's affidavit of defense that if appellant was the maker of said notes, his statement "that there has been no demand for payment or presentment" constitutes no defense, nor does his statement "that the plaintiff corporation paid nothing of value for said notes"

constitute a defense; the statement "that the plaintiff is not a holder of said notes for value or any consideration in the due course of business and that the plaintiff acquired said notes after maturity and dishonor" does put the appellee in a position where the defendant might and must go further and set up a valid defense against the original payee.

The only such defense sought to be raised is that "the consideration paid for the notes sued upon herein wholly failed." This statement and the whole affidavit is made upon information and belief. The cases cited recognize full well the impropriety of such a bare statement.

In *King v. Curtin*, supra, the court said:

"The defendant attempts to interpose usury as a partial defense without stating the facts which constitute the alleged usurious transaction. His assertion that the notes sued on are usurious is a mere conclusion of law, and not a statement of fact from which the real character of the notes may be determined. * * * the plaintiff is not bound to accept the mere conclusion of the defendant based upon facts not appearing in his affidavit. Obviously the affidavit should state facts sufficient to enable the Court to verify the conclusion."

The sole point of defense, raised in the first motion for judgment, because of the insufficiency of the affidavit of defense, was not enlarged on when the second affidavit, the one considered here, was filed. It is, therefore, unquestionably true that the defendant has no facts with which to support his conclusion. Supporting such reasoning, counsel quotes the following statement made in *Cornwell v. South Maryland Trust Co.*, 53 App. D. C. 281, 283:

"We have also held that, if the defendant in his affidavit chooses to employ doubtful or am-

biguous expressions, when unmistakable language was ready at hand, it is fair to assume that he did so because he did not quite dare to use the stronger expressions; that it must be assumed that he has used the strongest language that the truth would warrant, and that doubtful or ambiguous expressions would be construed against the composer; that it must be assumed that the affidavit was as broad and definite as possible for the deponent to make, and that the facts stated in his affidavit must be assumed to be true; that if laxity of statement is countenanced in the affidavit, where particularity may be employed, the purpose of the rule will not be served. *Mearns v. Harris*, 45 App. D. C. 536; *Eisinger v. Gill*, 47 App. D. C. 312; *Woodmen of the World v. Davis*, 48 App. D. C. 614; *Rice Auto Co. v. Spillman*, 51 App. D. C. 378."

A summary of the cases cited by appellant in his brief shows that the same do not meet the requirements of the Rules of Court. This Court stated, in *Cropley v. Vogeler, supra*, that

"The requirements of the rule seems to be plain and simple enough. Proof is not required by it; details would be improper and conclusions of law impertinent. A brief and comprehensive statement of facts, or what the defendant supposes to be facts and honestly expects to prove at the trial, which would be sufficient in law, if adequately supported by testimony, to constitute a valid defense to the suit, is what the rule contemplates and requires."

The cases cited by appellant do not hold a mere statement that the consideration has failed to be a defense. All of the cases cited by him, while unanimous in holding that every doubt as to whether a defense is stated or not should be resolved in favor of affiant, state also that sufficient facts must be alleged to support the indicated defense. Appellant's counsel

quotes from *Codington v. Standard Bank*, 40 App. D. C. 409, but he can not have read this case thoroughly. In that case, as here, the plaintiff was the holder and the defendant the maker of a note, and the Court accepted statements made on information and belief to the extent of a concession that the plaintiff may not have been a holder in due course. But the official report of this case shows that the defendant first alleged facts, which, if sustained by proof, constituted a good defense as against the original payee of the note. In every case where there is in affidavit of defense setting up facts, the Court always has placed particular emphasis on pleading facts sufficient to constitute a defense.

In conclusion we will say that the single statement made in defense is not a statement of fact but a bare and impertinent conclusion of law which cannot by any means be read into a sufficient statement of factual defense.

It is therefore respectfully submitted that the judgment of the court below be affirmed.

Respectfully submitted,
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JOSEPH A. KAUFMANN,
Attorneys for Appellee.